

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B5

FILE:

SRC 09 165 53163

Office: TEXAS SERVICE CENTER Date:

JAN 07 2010

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on December 31, 2007, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel argues that the petitioner has “significant prior achievements” and “has exercised substantially greater influence on his field than his peers.” Counsel further argues that the director erred by failing to request further evidence before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS [U.S. Citizenship and Immigration Services] in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. With regard to counsel’s concern, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner submitted a documentation showing that he earned a Bachelor's Degree in Medicine from Binzhou Medical College and a Doctorate and Master's Degree in Surgery from Capital University of Medical Sciences. The petitioner also submitted an educational evaluation from American Evaluation and Translation Service, Inc. indicating that his education in China "is the equivalent of the U.S. degrees of Doctor of Medicine, Master of Science in Medical Sciences (Specialization in Surgery), and Doctor of Philosophy in Medical Sciences (Specialization in Surgery)." The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 216 (Comm. 1998) [hereinafter "NYSDOT"], has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

We note that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective"

is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

At the time of filing, the petitioner was working as a postdoctoral fellow and research associate under the supervision of [REDACTED] of Medicine and University Distinguished Scholar, Department of Medicine, University of Louisville. We concur with the director that the petitioner works in an area of intrinsic merit, hepatology research, and that the proposed benefits of his work would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Along with his published articles and other documentation pertaining to his field of research, the petitioner submitted several letters of support.

[REDACTED] states:

In his current work, [the petitioner] showed that anti-copper therapy with tetrathiomolybdate (TM) is effective in attenuating bile duct ligation-induced cholestatic liver injury and fibrosis in a murine model. This study provides rare insight for the development of novel drugs to treat liver injury and liver fibrosis. [The petitioner] is continuing to study the cellular and molecular mechanisms by which copper modulating fibrogenic pathway. This study is in collaboration with [REDACTED] from University of Michigan . . . .

Besides this, [the petitioner] has also conducted innovative research work on non-alcoholic steatohepatitis (NASH). In this study, his data showed that *Silymarin*, a flavonoid extracted from the milk thistle *Silybum marianum*, is effective in protecting from free fatty acids induced lipotoxicity in hepatocytes (an in vitro NASH model). His results provide evidence that silymarin have beneficial effects in the treatment of NASH.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

letter further states that the petitioner "is the author of more than ten scientific papers." We note that publication in journals and conference proceedings is inherent to scientific research.<sup>1</sup> For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by his work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. The petitioner initially submitted search results from Google Scholar and Web of Science demonstrating a few cites to his published articles. None of the citation indices initially submitted indicated that any of the petitioner's articles was independently cited more than five times. For example, according to a Google Scholar citation index initially submitted by the petitioner, his most frequently cited article at the time of filing was an article first-authored by [REDACTED] entitled "A Shared Epitope of the Interphotoreceptor Retinoid-Binding Protein Recognized by the CD4<sup>+</sup> and CD8<sup>+</sup> Autoreactive T Cells." The preceding article was cited to six times, but five of those citations were self-citations by the petitioner's coauthor [REDACTED]. Self-citation is a normal, expected practice among researchers in the scientific community. Self-citation cannot, however, demonstrate the response of independent researchers. While the citation indices initially submitted indicate a small degree of interest in the petitioner's published work, their limited number is not sufficient to demonstrate that his work has significantly influenced his field as a whole or otherwise sets him apart from other researchers in the hepatology field.

[REDACTED] of Human Genetics and Internal Medicine, University of Michigan at Ann Arbor, states:

---

<sup>1</sup> For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at <http://www.bls.gov/oco/>), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on December 4, 2009, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>, accessed on December 4, 2009, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS's position that authorship of scholarly articles does not set the petitioner apart from others in his field; we must consider the research community's reaction to those articles.

We share a common goal with [REDACTED] lab of understanding the mechanisms of copper in fibrosis. . . . So far, there is no ideal drug therapy for liver cirrhosis.

\* \* \*

[The petitioner's] data clearly showed that TM is effective in attenuating bile duct ligation induced cholestatic liver injury and fibrosis by inhibiting tumor necrosis factor (TNF)- $\alpha$  and transforming growth factor (TGF)- $\beta$ 1 secretion. These are critical important preliminary data for clinical trials. Liver cirrhosis remains an important health problem, and is the fourth leading cause of death in the United States. Billions of dollars will be spent every year to care for these patients.

\* \* \*

I am very familiar with [the petitioner's] work through his data and paper on our collaborative projects. . . . It is his background as a trained medical doctor and Ph.D. with special expertise in surgery, biochemistry, molecular, and cellular biology, along with his remarkable strong abilities in the application of up to date laboratory techniques, that allowed [the petitioner] to succeed in accomplishing this project.

As discussed previously, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221. Further, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. The observations from various references about the importance of the petitioner's hepatology research establish the intrinsic merit of his work, but their comments are not adequate to show that his individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

[REDACTED] of Nutrition and Toxicology, University of Kentucky, states:

I am very aware of [the petitioner's] research work . . . through discussion with his supervisor, [REDACTED]. Because both [REDACTED] and I were faculty in the Nutritional Science Program at the University of Kentucky, we continued to collaborate even after he has moved to the University of Louisville.

[The petitioner] demonstrated that therapy with tetrathiomolybdate (TM) is effective in protecting against liver injury and fibrosis in a bile duct ligation animal model, and this study provided the evidence for a novel therapy for liver fibrosis. A scientific paper will be published in the *Journal of Pharmacology and Experimental Therapeutics* which is a highly prestigious journal in pharmacology.

The results of the petitioner's TM therapy research were not published in the *Journal of Pharmacology and Experimental Therapeutics* until May 2008. The petitioner, however, must demonstrate his eligibility as of the petition's filing date of December 31, 2007. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). In this matter, that means that the petitioner must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his as of yet unpublished research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4<sup>th</sup> Cir. 2008). Accordingly, articles by the alien that were not published as of the date of filing and, thus, had not been subject to peer review and disseminated in the field as of that date, cannot establish eligibility for the national interest waiver as of the date of filing. To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that his work might prove influential while the petition is pending.

Division of Gastroenterology/Hepatology, Department of Medicine, University of Louisville, states: "[The petitioner] has an extensive experience in liver disease. He also has a strong background in molecular and cellular biology as well as liver surgery." With regard to the petitioner's scientific knowledge and research experience, objective qualifications and experience necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *NYSDOT*, 22 I&N Dec. at 215, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training, education, or experience that could be articulated on an application for a labor certification.

of Medicine, Division of Gastroenterology/Hepatology, Department of Medicine, University of Louisville, states: "Based on the hypothesis that fibrogenesis is modulated by copper, [the petitioner] has showed that anti-copper therapy protect against liver fibrosis (an early stage of liver cirrhosis)." further states that this discovery "potentially will lead to a whole new means of treating liver cirrhosis." While comments on the promise of the petitioner's research and what may one day result from his work, the documentation submitted by the petitioner does not establish that his past research has already

significantly influenced his field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49.

In addition to the letters of support, the petitioner submitted evidence of his professional certifications, association memberships, and academic awards. We note, however, that professional certifications, professional association memberships, and recognition for achievement in one's field relate to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. 8 C.F.R. § 204.5(k)(3)(ii). We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.*; *see also id.* at 222.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director found that the petitioner had not established that his past accomplishments were of such unique significance that he qualifies for a waiver of the job offer requirement.

On appeal, the petitioner submits additional recommendation letters, publications, citation records, documentation showing that he served as a reviewer for the *Journal of Pharmacology and Experimental Therapeutics* in 2008, conference abstracts from 2008 and 2009, and evidence of his membership in the American Society for Pharmacology and Experimental Therapeutics. Counsel argues that the submitted documentation shows that the petitioner "will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

The petitioner's peer review duties for the *Journal of Pharmacology and Experimental Therapeutics* in 2008 and his conference abstracts from 2008 and 2009 post-date the filing of the petition. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, with regard to the petitioner's conference abstracts submitted on appeal and at the time of filing, we note that participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the scientific community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not significantly distinguish the petitioner from others in his field.

[REDACTED] of Respiratory Cell and Molecular Biology, Imperial College of Science, Technology and Medicine, London, states:

[The petitioner] has published extensively in well respected journals since his arrival in the USA . . . and clearly . . . has an in-depth knowledge and experience on various areas of life sciences, from immunology to cellular and molecular biology that he shares with others in a collegiate manner reflected by the number of middle author papers to his name.

As previously discussed, it cannot suffice to state that the petitioner possesses useful skills or a unique background. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit his skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221. [REDACTED] further states that the petitioner's "talent and skill sets cannot be articulated in a typical labor certification job description." The inapplicability of an alien employment certification, however, cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5. [REDACTED] also discusses the paper published by the petitioner in May 2008 in *Journal of Pharmacology and Experimental Therapeutics* stating: "[The petitioner] has recently been working on liver fibrosis and it was through his paper published in JPET that I became aware of his research. . . . His results suggest that copper plays a key role in the development of liver fibrosis."

In the same manner as [REDACTED] of Medicine, Emory University School of Medicine, also discusses the petitioner's 2008 article in *Journal of Pharmacology and Experimental Therapeutics*. [REDACTED] states:

I am impressed by [the petitioner's] research and his great achievements in the area of liver fibrosis research, particularly his paper published in *Journal of Pharmacology and Experimental Therapeutics* in 2008.

\* \* \*

This paper represents a comprehensive study a comprehensive study of liver fibrosis prevention by TM in an excellent mouse model, and demonstrates suppression of numerous gene activities involved in inflammation and fibrosis.

Similarly, [REDACTED], Professor of Medicine and Chief of the Division of Digestive and Liver Diseases at the University of Texas Southwestern Medical Center, states: "[The petitioner's] results have been published in *Journal of Pharmacology and Experimental Therapeutics*, a leading research journal in the field of pharmacology. His findings have created significant impact on the development of novel therapy for liver fibrosis."

[REDACTED], Department of Internal Medicine, University of Iowa Roy J. and Lucille A. Carver College of Medicine, also discusses the petitioner's paper in *Journal of Pharmacology and Experimental Therapeutics* stating that his findings "provided an important step in the development of anti-scarring treatments for liver disease" and that they "are very promising and highly significant."

Counsel argues that the preceding letters demonstrate the influence and impact of the petitioner's work. The preceding letters from [REDACTED] and [REDACTED] discuss the results published by the petitioner in May 2008 in *Journal of Pharmacology and Experimental Therapeutics*. As discussed previously, this article was published subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider research findings published by the petitioner in May 2008 in this proceeding.

With further regard to the letters of support, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from individuals selected by the petitioner is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). In this case, the content of the letters of support submitted by the petitioner does not establish that his work at the time of filing had already had a significant national impact or otherwise influenced his field as a whole.

The petitioner's appellate submission includes a "Citation Certificate for [the petitioner's] publications in China" summarizing citation results obtained "by searching CMCI, CNKI, CSCD and WANFANG Database System." The certificate was accompanied by a Chinese language compilation listing the articles that allegedly cite to the petitioner's work, but no actual results originating directly from the preceding databases. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The compilation of articles in the Chinese language submitted by the petitioner was unaccompanied by a certified English language translation as required by the regulation. Accordingly, the AAO cannot assign weight to the non-translated Chinese citation records in this proceeding. Moreover, none of individuals providing letters of support for the petitioner in this proceeding address the petitioner's specific research findings from China or their significance to the field as whole.

The petitioner also submits May 18, 2009 search results from ISI Web of Science reflecting that his research articles in the United States have been cited to 57 times (including several self-citations by the petitioner and his coauthors). We cannot ignore, however, that 40 of the submitted cites to the petitioner's work post-date the filing of this petition. The articles citing to the petitioner's work from 2008 and later do not constitute evidence that he was already influential as of the petition's December 31, 2007 filing date. As of that date, there is no evidence demonstrating that the petitioner's work had a significant degree of influence on his field. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of*

*Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider cites to the petitioner's work from 2008 and 2009 in this proceeding.

While petitioner has contributed to hepatology research studies undertaken by the University of Louisville, the petitioner has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSBOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.